

Madam Chairwoman:

I am pleased to make myself available once again to this subcommittee to share my views on the need for at least a partial exemption by the Central Intelligence Agency from the Privacy Act of 1974. Since we covered this ground on March 5th, I will not take the time of the committee to repeat how the committee arrived at the current exemption for the Agency in section 3(j) of the Act as justified on the basis of the objective to be served by that Act and the necessity to protect from public disclosure certain information of the Central Intelligence Agency.

Madam Chairwoman, I have consistently indicated my willingness to narrow the Agency's name exemption in the Act to an exemption protecting intelligence sources and methods from unauthorized disclosure. I have also indicated, and in fact, implemented a policy, even in the face of our current exemption in the Act, which becomes fully effective 27 September 1975, to respond to requests from American citizens and permanent resident aliens by providing them what information we have on them, consistent with my statutory responsibility to protect certain information and to otherwise conform to restrictions imposed upon the release of information in the Freedom of Information and the Privacy Acts.

I wish to assure the members of this committee, the Congress as a whole and the American people, that we in the intelligence profession are completely dedicated to the policy reported in the Privacy Act of 1974 that information on American citizens and permanent resident aliens be collected and used

only for proper governmental purposes. I only ask that in holding us accountable to this commitment, it be done in a manner and by means which protect those "good" secrets of the Central Intelligence Agency, because only in this way can our continued contribution to our country's interests be assured.

It is my belief that the United States of America is served by the finest foreign intelligence service in the world. Many needs face this nation. I can only talk to the need of decision makers in the Executive branch and in the Congress for information on developments to come to grips with such vital questions as war or peace, our national interests and well-being, and the need to provide similar information to the public, our free press, and academia in a manner compatible with security interests.

Unlike any other major democracy, ours is the only one which has enabled its foreign intelligence service through statute. This is in keeping with our American tradition and we would not have it any other way. But in structuring a foreign intelligence service to meet the challenges and opportunities that confront this nation in a world which has not yet reached the millennium, when swords have not yet been beaten into plow shares, certain essentials must be provided. As an automobile can only run downhill without its engine, and a mountain climber can only fall without the aid of his rope, a foreign intelligence agency can only fail--it cannot produce what the nation needs--unless it is given certain latitude to protect "good" secrets. These secrets involve protecting the identity of those furnishing us information where that is a condition prerequisite. They also involve the technical means and other sources which we rely to collect and analyze foreign intelligence information where these capabilities can be vitiated or voided if these capabilities are publicized.

It was these "good" secrets, Madam Chairwoman, which are explicitly addressed in the National Security Act which imposed upon the Director of Central Intelligence the responsibility "for protecting intelligence sources and methods from unauthorized disclosure."

I do not want to belabor the point, Madam Chairwoman, but in March there were a number of questions in this area from the members of the committee. It may not be clear to all of those outside of intelligence, that the protection of sources and methods is a sine qua non of our profession.

The Agency, to a great extent, deals in classified information. The substantive intelligence information possessed by the Agency and included in its reports may bear on the national defense and the foreign relations of the United States. But independent of such information, although often included in it, are clues to the identity of the acquiring sources or methods.

The distinction is recognized not only in the National Security Act of 1947 proviso concerning the protection of intelligence sources and methods, but also in the legislative history of the Freedom of Information Act Amendments of 1974 which were acted upon by the House Government Operations Committee.

On March 5, 1974, the Government Operations Committee report on the Freedom of Information Act Amendments (H.R. 12471) recognized that certain types of governmental information are "born classified," a result of statutory enactments. The conference report on this legislation specified intelligence sources and methods [50 U.S.C. 403(d)(3) and (g)] as such an enactment. These enactments and statements recognize the inherent sensitivity of information dealing with intelligence sources and methods.

The question that arises in the light of the current investigations into past Agency practices is whether the Central Intelligence Agency, and I, as Director of Central Intelligence, now exercise sufficient internal control and supervision, and are under sufficient external control and supervision, to assure that the Agency, in protecting information from disclosure, does not thereby cover improper activities with respect to American citizens.

It is clear that some activities were conducted in the past which overstepped proper bounds. We in the Agency understand and support the constitutional process of investigation to insure that such mistakes are not repeated. However, in the totality of Agency service to the proper and legal foreign intelligence requirements of this nation, it is erroneous to draw a picture of our activities today based upon those few mistakes. More importantly, dangerous to act on distortions and in the process possibly permanently injure the Agency capabilities to serve the nation, today and tomorrow.

To those injured by our mistakes, there may be little comfort that our mistakes were few and far between or that in large measure they were undertaken because of ambiguities which may have led reasonable men astray, perhaps more yesterday than today. Any American institution of comparable size and complexity, and subject to the intense scrutiny to which CIA is subject today would produce analogous missteps over a twenty-seven year history.

The essential issue, Madam Chairwoman, is accountability, control, and supervision--internal and external. Since we are considering legislation for the future, I think it is important to note that CIA recognized its errors and issued clear instructions to prevent

such missteps in the future. This occurred two years ago, long before the initiation of any of the current investigations. Two years ago assurance was provided by me to the chairmen of the CIA oversight committees that improper activities would not be conducted in the future. I reaffirmed this commitment during my confirmation hearings in July 1973. My commitment that CIA will operate completely within the law has been made frequently and clearly. I have implemented this commitment through a detailed set of instructions in August 1973 covering each and every one of the areas where missteps were pinpointed in the past.

The special interest of this subcommittee, Madam Chairwoman, concerns the collection and use of Agency information on American citizens and permanent resident aliens. It is my belief that the June 1975 Report to the President by the Commission on CIA Activities Within the United States covers this matter quite thoroughly in Chapter 18, "Indices and Files on American Citizens."

That chapter recognizes: first, "that the collection of information about people is a major function of the CIA;" second, "the collection of information about a person who may be American citizens is largely incidental to collecting information about people generally;" third, the need of the Agency to possess information on "individuals suspected of working on behalf of a hostile intelligence service and persons of interest as actual or potential sources of information or assistance;" and fourth, the need for information on U. S. citizens who enter into some type of relationship with the Agency and in connection with the need to grant or deny security clearances before access to classified Agency information is approved.

It also relates the various precautions undertaken within the Agency now to assure that the opening of a file on an American citizen is necessary and the information contained in the file is proper.

In the chapter's concluding statement, there is the observation that "Constant vigilance by the Agency is essential to prevent the collection of information on United States citizens which is not needed for proper intelligence activities." Finally it recommends

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an Executive Order, which I would like to include at this point in the record, to assure that Agency collection of information about the domestic activities of United States citizens is consistent with the Agency's mission.

These observations are consistent with my views. We have taken steps to insure that the information possessed by the Agency on American citizens should be only that which is essential to the mission of the Central Intelligence Agency. It is quite possible that the Select Committees in the Congress studying these questions may have additional recommendations in this area.

Another question of special interest to this committee is that Agency information on American citizens properly collected and maintained by the Agency not be available outside the Agency for improper use. I, of course, have no control on how other agencies use CIA information except to share information only where a legitimate function is being performed. Access to our information by other agencies is tightly controlled and information collected by the Agency on American citizens, which is so shared, is essentially limited to: proper requests from the FBI for information on Americans abroad (and such information is only collected pursuant to a request from the FBI); information collected on activities abroad in connection with illicit narcotics trafficking and terrorism; and information on individuals suspected of working on behalf of a hostile intelligence services.

It is in keeping with our American tradition that the activities of government agencies are subject to external oversight. Beyond our firm commitment to conduct our activities within and pursuant to law, the

CIA is subject to oversight and direction within the Executive branch of the Federal government and oversight in the Congress.

The Agency operates under the direction of the National Security Council chaired by the President of the United States.

The Agency is subject to the oversight of the President's Foreign Intelligence Advisory Board, and the June 1975 Report to the President by the Commission on CIA Activities Within the United States recommends (Recommendation 5) expanded oversight of the CIA by the Board to include areas of compliance by the CIA with its statutory authority, the quality of the organization and management of the CIA and recommendations thereon to the President, the Director of Central Intelligence, and where appropriate, "the Attorney General."

Finally, with respect to external controls, there is the Congress of the United States. The structure of the oversight of the CIA within the Congress is a matter for the Congress to determine. I am, of course, comforted by the dedication of the current oversight structure to protect our "good" secrets. It is important to recall that it was the chairmen of the Agency's oversight committees who insisted, along with me almost two years ago, that the Agency revise its practices, which led to the instructions I issued in August 1973 to assure that the missteps of the past do not occur again.

Madam Chairwoman, in concluding, as the official designated by statute and the President for assuring that our elected and appointed policy-makers are provided the information they need on foreign developments I would like to reiterate:

--In the world in which we live the need for the CIA must not be underestimated.

--The importance of CIA to serve this nation's interest and well-being must not be underestimated.

--The need to protect our nation's foreign intelligence sources and methods must not be underestimated.

--The dedicated and superb service of Agency employees and officials from Day One when the CIA was first created on 18 September 1947 must not be overshadowed by what might well become only a footnote in an otherwise illustrious history.

NOT FOR INCLUSION AS PART OF PREPARED STATEMENT, BUT TO BE SAID BEFORE DIRECTOR ENTERTAINS QUESTIONS:

Madam Chairwoman, with your indulgence and before I respond the questions, I want to take notice of the fact that the subcommittee Staff Director has raised with my Legislative Counsel a number of issues which relate to internal management and direction of the sensitive operations of the CIA. I do want to be helpful to this committee. Such information has obviously been made available to the Commission on CIA Activities Within the United States and is available to the Select Committees of the Congress, as well as the four regular oversight committees of the Congress. In accordance with the guidelines that apply to the Agency and to protect the Agency's "good secrets" I believe it would be inappropriate to go into these matters in this forum. It is hoped that the committee will recognize these constraints and indulge me in these areas.

Also, as you may know, the President has requested my comments on the recommendations and other matters covered in the June 1975 Report by his Commission. I believe it would be inappropriate for me to comment at this time on those matters and recommendations in deference to my responsibility to the President. Within these restraints, which I hope will not unduly impinge upon the committee's need for information as it relates to consideration of the Agency's exemption in the Privacy Act, I would be pleased to respond to your questions to the best of my ability.

Insert for Record, page 6, line 4

(Excerpt from Report to the President by the Commission on CIA Activities
Within the United States, page 13)

Recommendation (2)

The President should by Executive Order prohibit the CIA from the collection of information about the domestic activities of United States citizens (whether by overt or covert means), the evaluation, correlation, and dissemination of analyses or reports about such activities, and the storage of such information, with exceptions for the following categories of persons or activities:

- a. Persons presently or formerly affiliated, or being considered for affiliation, with the CIA, directly or indirectly, or others who require clearance by the CIA to receive classified information;
- b. Persons or activities that pose a clear threat to CIA facilities or personnel, provided that proper coordination with the FBI is accomplished;
- c. Persons suspected of espionage or other illegal activities relating to foreign intelligence, provided that proper coordination with the FBI is accomplished.
- d. Information which is received incidental to appropriate CIA activities may be transmitted to an agency with appropriate jurisdiction, including law enforcement agencies.

Collection of information from normal library sources such as newspapers, books, magazines and other such documents is not to be affected by this order.

Information currently being maintained which is inconsistent with the order should be destroyed at the conclusion of the current congressional investigations or as soon thereafter as permitted by law.

The CIA should periodically screen its files and eliminate all material inconsistent with the order.

The order should be issued after consultation with the National Security Council, the Attorney General, and the Director of Central Intelligence. Any modification of the order would be permitted only through published amendments.